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BOOK REVIEWS.

EVOLUTION OF LAW: Selected Readings on the Origin and Development of Legal Institutions. 3 volumes. 1915-1918. Volume 1, Sources of Ancient and Primitive Law. Volume 2, Primitive and Ancient Legal Institutions. Volume 3, Formative Influences of Legal Development. Compiled by Albert Kocourek and John H. Wigmore. Boston: Little, Brown & Company. \$12 net.

In introducing these three volumes of upwards of seven hundred pages each to the readers of this LAW REVIEW, I can do no better than quote from an article of Dr. Alejandro Alvarez on "New Conception and New Bases of Legal Philosophy," published in the October-November, 1918, number of the *Illinois Law Review*, page 181. "An investigation of the lines of development of the law in the past, in the present, and with an orientation of the future requires an appropriate method. This method should be historical and comparative and should be supplemented by observation of contemporary life. A true philosophy of law is possible only when it is based on a judicious investigation of institutions athwart the ranges of time and space, and the influences bearing on them through surrounding social phenomena. It is only upon this condition that juridical life can be really understood, with its enchainment of influences, their successive modification, the relations of cause and effect which bind them together, and their governing law."

The three volumes before us are a pioneer attempt to present to American readers enough material, original and secondary, to enable them to obtain an idea not only of the vastness of the field attempted to be covered, but of the great principle of unity in diversity which a study of comparative or ethnological jurisprudence brings to light.

The first volume is divided into four parts. Part 1 deals with general literature and contains references to ancient and primitive law and institutions. The selections made are from the *Iliad* and the *Odyssey*, Plutarch's *Lives*, Cæsar's *Commentaries*, Tacitus' *Germania* and the great Icelandic Saga of *Njal*. The legal practitioner will find it difficult to understand how general literature may furnish material for his professional investigation. He is accustomed to look to statutes and judicial decisions as the only sources worthy of his attention. But it has long been well known that man is unconsciously making a record of all of his thoughts and deeds in his literature and the rules of his life in society cannot help being reflected therein. Many years ago I studied the biblical literature with this thought in mind and found in many of its parts, not intended to be legal records, most interesting and instructive legal material; for instance, the story of Adam and Eve in the Garden of Eden is full of ancient law, the book of Job is a perfect mine of legal doctrine and procedure. A student of the evolution of law will neglect nothing, for every record of human thought may contain material useful to his science.

The second part is devoted to modern observations on retarded peoples

and contains interesting chapters on customs of Australian, Esquimo, American-Indian and African negro tribes in which the germ and counter-part of many rules familiar to civilized society may be found.

The third part is devoted to ancient and primitive laws and codes and includes extracts from ancient Accadian, Assyrian, Hebrew, Egyptian, Cretan, Hindu, Germanic, Anglo-Saxon and Welsh codes. A few Suras from the Koran might well have been included in this part and it might be suggested with reference to the chapter on the Pentateuch that many of the selections referred to therein are neither primitive laws nor codes, but are either records of legal transactions which should have been included in part 4 or works such as should have been included in part 1 devoted to general literature.

Part 4 contains a most interesting collection of ancient and primitive legal transactions from Egyptian, Babylonian, Grecian, Roman and Germanic sources and as well as Egyptian, Babylonian and Assyrian legal documents. As the editors well knew and pointed out in their preface, the field to be covered was so extensive and limitation of space so obvious that they had consciously to commit various sins of omission and commission. No doubt any other editor or editors would have made a somewhat different collection of materials, just as the authors of a case book for students at law will differ both as to arrangement and selection of material, but Professors Kocourek and Wigmore enjoy the distinction of being the first to make a collection of this kind for the American student and it will be easy enough for their successors in this field to add to the material collected by them.

Volume 2, devoted to Primitive and Ancient Legal Institutions, is intended to supplement the first volume. The latter gives the raw material, the second volume presents studies of modern scholars who have devoted themselves either to a general survey of the whole field or to particular problems presented by special topics. The second volume is introduced by four admirable sections written by some of the greatest of the modern masters. The first section on the Evolution of Law, by Prof. Josef Kohler, is a very short but very profound and inspiring presentation of the subject of evolution of law. Professor Kohler is himself one of the most distinguished contributors to the development of this science and one of the founders of the science of comparative jurisprudence. The second chapter on Ethnological Jurisprudence was written by Dr. A. H. Post, whose enormous learning and diligence have gathered for us material from every corner of the earth, by means of which we may study the development of legal ideas among all peoples, ancient and modern, primitive and advanced.

Part 1 is devoted to the subject of the Law and the State and contains material on such topics as the Evolution of the State, Religion and Law, Evolution of Criminal Law and Methods of the Law's Growth. Much of this material has been drawn from the writings of two men to whom above all others students of twenty-five years ago, among whom the reviewer is enrolled, owe their introduction to this modern and fascinating science—Henry Sumner Maine and Fustel DeCoulanges. 'Ancient Law' and the other pioneer work of Maine, and the "Ancient City" of DeCoulanges were for us, the young men of that day, the great pioneer works clearing a new path through the wilderness of legal thought.

The third part is devoted to the legal category of Things, including property, commercial institutions, pledge, suretyship, contract, interest and succession.

Part 4 is devoted to the subject of Procedure and concludes with a chapter by Dr. Gabriel Tarde on the Evolution of Procedure, which briefly but pointedly sums up the ideas developed in the prior chapters.

The third volume is divided into three parts. Part 1 containing three chapters on Criteria of Legal Evolution and Methods of Its Study, wherein there is an attempt to classify social types, to present a scientific method of generalizing from the data of legal evolution, and, third, to present a critique of method in the study of the law's evolution. It is obvious that unless there is some principle of valuation and comparison, the study of the legal phenomena of all the peoples of the world would be nothing more than a tabulation of differences and similarities. But as legal ideas develop in accordance with some need and toward some end, subject at all times to the transforming processes to which every change in the conditions of human life is contributing, there must be sought some method by which the direction and the character of the change may be appraised, and this is a study of the "progress" of legal ideas.

The second part deals with the factors of legal evolution. After two chapters dealing with the subject in general, there are chapters treating on the influence of geography on law, the economic foundations of law, the biologic factors, the racial, religious, psychologic, political and social factors. Here the reader may find a vast outlook upon an endless vista opening up to him from the narrow confines of the legal fields in which most lawyers are by force of circumstances fenced in. In these sub-divisions, the influence of Herbert Spencer, whose genius for the organization of evolutionary philosophy is in our day not sufficiently recognized, is everywhere apparent. The chapters by Miss Semple on the Influence of Geographic Environment on Law, State and Society; by Rudolph Jhering on the Struggle for Law and the original and illuminating study on Rudimentary Society Among Boys, by Mr. John H. Johnson, are especially valuable. Essays by Houston Stewart Chamberlain and Emile Reich, of very questionable value have been included and a rather superficial paper by Lord Bryce might also have been omitted.

One learns from these studies the absurdities of chauvinism and the stupidity of which no people is free of considering itself God's own people and everybody else as more or less undesirable "furriners" whose institutions, customs and laws are, by virtue of their divergence from the standard of perfection set by one's own, undesirable. Nothing, neither religion nor ethics nor any other doctrine, teaches the unity and the essential brotherhood of mankind as well as the study of comparative ethnology and particularly that branch of anthropological science which has come to be known as comparative ethnological jurisprudence.

The third and last chapter is devoted to the processes of legal evolution and contains a study of some of the leading interpretations of the concept society. We are here led into the highest ranges of our study in which minor variations and details disappear, and the subject is treated from the point of

view of one who is able to draw the diagram of social evolution in a series of great though by no means simple or symmetrical curves. The subjects treated in this part are the Evolution of Social Structures, Social Integration and Differentiation, Degenerate Evolution, the Evolution of Civil Law, the Perpetual Evolution of Law and what is perhaps the most modern and suggestive of all of these admirable contributions, a paper by Prof. John H. Wigmore on "Planetary Theory of the Law's Evolution," which relates the science of law to the other sciences and lays emphasis on the great fundamental fact of the close inter-relation between all the phenomena of life, the complexity of whose interaction is compared by the writer most ingeniously to the complexity of the system of forces under which our planetary system is driven on its infinite path through space toward an infinitely distant goal. In reading this and other chapters in this part, notably those of Professor Ward and Herbert Spencer and Professor Picard, one feels that after a long and torturous journey, a peak has been reached from which something like a comprehensive survey of legal phenomena may be obtained, but that there are higher reaches toward which the investigator must now be prepared to struggle.

Every law student should consider his legal education forever unfinished and especially so if he has failed to devote some time, taken if necessary from the severely practical and exacting duties of professional life, to the consideration of that field of legal thought which is presented in these three splendid volumes, for the production of which Messrs. Kocourek and Wigmore deserve our most grateful appreciation and upon the publication of which Messrs. Little, Brown & Company, of Boston, are to be congratulated.

David Werner Amram.

A HISTORY OF CONTINENTAL CRIMINAL LAW. By Carl Ludwig Von Bar and others. Translated by Thomas S. Bell and others, with an editorial preface by John H. Wigmore and introductions by William Renwick Riddell and Edwin R. Keedy. Boston: Little, Brown & Company. Pp lvi, 561. Price, \$4 net.

No part of this fine book exceeds in interest the chapter given in an appendix on pages 497-547, containing Professor Von Bar's theory of punishment for crime. After reviewing the accepted theories, both absolute and relative, he finds them all unsatisfactory and offers as a substitute the theory that criminal law is in effect a public disapproval of an act offensive to the moral sense of the community. He points out that the real sanction is neither retribution nor deterrence nor reformation and that whatever its secondary effects may be, the primary purpose of punishment is active and public disapproval of the act of the criminal. Read in the light of this theory, the history of criminal law assumes a consistency which the application of any of the other theories fails to produce.

Professor Von Bar's observations on such varied topics as the relation of Christian ethics to criminal law, the indeterminate sentence, private prose-